1951 **File No.** O.B.C.S.Rs./51

K Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Bombay Civil Service Rules

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It appears that Class IV Government Servants who had entered the D.D.Chawls prior to 1-9-41 are at present occupying 2 rooms each. They Secretary, F.D. has suggested that the accommodation should be reduced to one room each, so that more accommodation could be spared. R.L.A. is requested to advise whether there would be any legal objection to asking the persons concerned to vacate one of the two rooms.

2. Attention is invited toNote 3 below Rule 850 of the Bombay Civil Service Rules and to the Rules in section III of Appendix LV. Rule 1 of the Rent Concession Rules (Section III of Appendix LV) provides inter alia that "those residing in the Worli Chawls may be given two rooms each, except that unmarried inferior Government servants who have no near relatives living with them and married inferior Government servants whose families are not living with them, should be allotted only one room. Those residing in other chawls willbe entitled to one room only." The rule as emended in 1941, further provides that "Government servants in inferior service who are given rooms in the Worli Chawls on or after 1st September 1941 will be allotted only one room each. Inferior Government servants who, on that date, are in possession of two rooms each, shall, so long as they continue to be insuch possession be excluded from the scope of this restriction etc." The B.C.S.R having been made under clause (b) of section 241(2) of the Government of India Act, 1935, will have the statutory force, and consequently, under rule 1 of the Rules under section III of Appendix LV it would not be legally permissible for Government to ask the inferior Government

Government servants, who entitled to possession of two rooms, to surrender one of them to Government. In order to achieve the object, in the first instance, it would be necessary for Government to suitably amend the said rule empowering Government to claim possession of one of such rooms.

Further, there is another difficulty. The notice to terminate the lease must extend to all the premises. The landlord cannot break up the the tenure. A notice for a fraction of the holding is ineffective; it is not even good for the portion concerned (see p.536 of Mulla's Transfer of Property Act). Save under a threat of disciplinary action it would not therefore be legally feasible to force the Government servants now in occupation, to surrender one of the two rooms (vide R.L.A.'s opinion No. 7969 dated 15-7-1949).

3. The proposal is likely to result in eviction of tenants on a large scale. P.W.D. may, therefore, consider whether it would not be advantageous to simultaneously undertake a legislation facilitating summary eviction on the lines of the Government Premises (Eviction) Act, 1950 (Central Act No. XXVIII of 1950).

Sd/-
22/5

Remembrancer of Legal Affairs.

U.R. to P.W.D. No. 8161 dated the 24th May 1951

P.S.M.
7/4

Legal Department.

It appears that Shri K.R.Garud has been suspended from service with effect from 17th October 1949 on his reversion from the Housing Board and a departmental inquiry has been held against him for misconduct. In the meantime, he has accepted a job on Rs. 200 per month under the District Local Board, Ahmednagar, from 2nd May 1950. The question raised for the M.L.A.'s consideration is whether in view of that fact there would be any objection to withholding payment of subsistence allowance to him.

It is true that under rule 151 of the Bombay Civil Services Rules subsistence allowance is payable at the prescribed rates to a Government servant under suspension. But the intention of paying subsistence allowance to a Government servant under suspension is to enable him to maintain himself and his family during the period of suspension; for under rule 21 of the Bombay Civil Services, Conduct, Discipline and Appeal Rules he cannot, without the previous sanction of Government engage in any trade or undertake any employment while on duty or on leave, and during the period of suspension he is considered to be still in service. Since Shri Garud has accepted a job under the District Local Board, Ahmednagar, during the period of suspension, it appears that the benefit of rule 151 of the Bombay Civil Services Rules can be withdrawn. Though rule 151 does not expressly empower Government to withdraw or withhold subsistence allowance under such circumstances, it would be competent for Government to interpret it to the effect that the benefit thereunder would be available to a Government servant if he remains without accepting any job during the period of suspension (see rule 3 of the Bombay Civil Services Rules whereunder Government reserve to themselves

themselves the right of interpreting these Rules).

Sd/-

Additional Secretary to Government.

U.R. to L.& H.D. (thro' F.D.) No. 14353 Confl.,

dated the 18th Sept. 1951.

P.S.M. 7/4.

Legal Department.

Revised draft charge-sheet and statement of allegation are appended.

Sd/-

Additional Secretary to Government.

U.R. to L.& H.D., No. 14361, dated the 7th Sept. 1951.

P.S.M. 7/4

Charge Sheet.

Whereas by Government Resolution, Labour and Housing Department No. 1535/48, dated 14th June 1951, Government has ordered that I should hold a departmental enquiry into the conduct of Shri A.A.Tarwala, Supervisor, office of the Rationing Officer (Iron and Steel), Bombay and whereas the said Government Order has been communicated to Shri Tarwala by the Rationing Officer (Iron and Steel), Bombay, now therefore, I , Shri S.Y.Ranade, I.A.S., Under Secretary to Government, Labour and Housing Department, hereby charge you, Shri A.A. Tarwala Supervisor, (under suspension) in the office of the Rationing Officer (Iron and Steel), Bombay, as follows for purposes of departmental enquiry and disciplinary action:-

(1) That while serving as Supervisor in the office of the Rationing Officer (Iron and Steel), Bombay, you accepted, in (date or month to be given approximately) 1949, sums of Rs. 625/- and Rs. 2,000/- respectively from Shri S.T.Lokhandwala, formerly Secretary of the Broach District Consumers Goods Manufacturers' Association, as Gratification, other than legal remuneration, as a reward for facilitating the issue of iron and steel quota to the said Association.

(2) That while serving as Supervisor in the Office of Rationing Officer (Iron and Steel), Bombay, you used to receive at your residence persons interested in securing iron and steel quota, in such a manner as to raise grave doubts regarding your Bonafides. For example, you saw and discussed with the said Shri Lokhandwala twice at your residence in or about ———————— once when Shri Lokhandwala was in the company of Shri Eric Gilbert, Rationing Inspector,

Rationing Inspector, Bombay and Shri I.V.Patel of Kaira Iron and Steel Goods Manufactures' Association and a second time in or about ---------- With certain members of the Broach District Consumer Goods Manufacturers' Association in connection with the iron and Steel quota of the Broach Association. This conduct of yours did not befit a responsible Government officer.

You are called upon to show cause why any of these charges, if held established, should not be held sufficient to merit any of the punishments including dismissal, removal or reduction mentioned in rule 49 of the Civil Services (Classification, Control and Appeal) Rules. You will be entitled to get from the undersigned copies of all documents relevant to the inquiry.

Enquiry Officer.

PSM. 9/4.

Statement of Allegations on which The charges are based.

In November 1948, the Rationing (Iron and Steel) Officer directed the Supervisor in charge Building Materials Sub-Office, Ahmedabad, to form an Association of those persons who manufacture consumer goods and agricultural implements. A meeting of some persons who had a factory of their own was called by the Supervisor, Building Materials Sub-Office, Ahmedabad, Shri S.A. Patel and an Association was formed with Shri S.T.Lokhandwala as Secretary for the year 1948-49 and it was decided to name the above Assocation as the Broach District Consumer Goods Manufacturer Association, Broach.

Shri Lokhandwala went to Bombay in November 1949 to see the Rationing Officer (Iron and Steel), Bombay, as the Association was getting very short of the materials, He was ordered to see you, Shri A.A. Tarwala, Supervisor in the Rationing Officer (Iron and Steel)'s Office. It is alleged that you agreed to do your best to supply the quota if Shri Lokhandwala agreed to your conditions. Shri Lokhandwala was asked to see Shri V.C.Champaneria, Secretary, Surat Tin and Metal Manufacturers' Association in the matter. Shri Champaneria informed Shri Lokhandwala to be ready next morning to see you at your residence. He accordingly saw you at your residence on Mangaldas Road, Princess Street, Bombay. It is alleged that you told him at that meeting that anybody wanting iron and steel for manufacturing goods had to pay toyou Rs. 2 per cwt. as gratification, every month on the 15th and 30th. If any manufacturer disagreed to pay the money, his quota would

quota would be stopped. Shri Lokhandwala explained that without the consent of the other members of his Association he could not pay anything to you. However on being pressed by you he made an advance payment of Rs. 625/- to you on the spot. After returning to Broach, the matter was explained by Shri Lokhandwala to the Association and he again visited you with certain members of the Association. At that time a further advance payment of Rs. 2,000/- was made. The Association, it is alleged is getting its quota through paying such gratification money demanded by you.

PSM. 9/4.

Legal Department.

The interpretation put on Rule 152 of the B.C.S.R. by the Finance Department at 'A' of /its note dated 22-9-51 is correct.

Sd/-

Additional Secretary to Government.

U.R. to R.D., No. 831 Confl. dated the 4th October 1951.

P.G.M. 9/4

Office of the R.L.A.

There is no objection to taking the action proposed in the last paragraph of the Political and Services Department note dated 25-9-1951.

Sd/-
4/10

Remembrancer of Legal Affairs.

U.R. to L.S.G. & P.H.D., through P.&S.D., No. 839 Confl. dated the 5th October 1951.

PSM. 9/4.

Legal Department.

Revised drafts of the charges against-

(1) Shri Dattatraya Shankar Deodhar

(2) " Jal D. Bharucha

(3) " s. K. Savant

are forwarded herewith.

Sd/-

Additional Secretary to Government.

U.R. to H.D., No. 615, Cenfl. dated the 29th June 1961.

CHARGE.

WHEREAS A DEPARTMENTAL inquiry was held against you Shri Dattatraya Shankar Deodhar Jal D. Bharucha in respect of the illegal gratification alleged to have been received by you from the Zorastrian Motor Training School, and WHEREAS the Government have not accepted the recommendations of the Enquiry Officer and have decided to held a fresh departmental inquiry;

NOW, ~~HERE~~ THEREFORE, this is to charge you Shri Dattatraya Shankar Deodhar Jal D. Bharucha that in the month of March 1950 Nov. 1949 while you were a public servant working in the office of the R.T.O. at Bombay and doing the work of testing applicants for grant of Motor driving licences you accepted from the Proprietors of the Zorastrian Motor Training School of Bombay Rs. 30/- in cash 10/- in cash as gratification other than legal remuneration as a motive or reward for showing in the exercise of your official functions favour to the trainees of the above mentioned School.

THEREBY YOU HAVE

(1) shown yourself to be corrupt and unfit to held a post in Government service;

(2) acted contrary to the principle embodied in Rule 6 of the Bombay Civil Services Conduct Discipline and Appeal Rules.

YOU ARE, THEREFORE, hereby called upon to put in a written statement of your defence within.....days and to state whether you desire to be heard in person. You are also required to file along with your written statement the documents, if any, on which you rely.

THE FOLLOWING documents will be taken into consideration at the proposed enquiry against you, namely,

The three account-books of the Zarostrian Motor Training School which had been producedin the previous enquiry,

and a copy of the relevant entry from those account-books is sent to you herewith.

PSM. 9/4.

o/c
ENQUIRY OFFICER.

CHARGE.

WHEREAS A DEPARTMENTAL inquiry was held against you Shri S.K.Savant in respect of the illegal gratification alleged to have been received by you from the Zorostrian Motor Training School, and WHEREAS the Government have not accepted the recommendations of the Enquiry Officer and have decided to hold a fresh departmental inquiry;

NOW, THEREFORE, this is to charge you Shri S.K. Savant that in the months of June and July 1947 while you were a public servant working in the office of the R.T.O. at Bombay and doing the work as a clerk you accepted from the Proprietors of the Zorostrian Motor Training School of Bombay Rs. 16/- in cash and a pair of Dhoties worth Rs.8/- as gratification other than legal remuneration as a motive or reward for showing in the exercise of your official functions favour to the trainees of the above mentioned School.

THEREBY YOU HAVE

(1)shown yourself to be corrupt and unfit to hold a post in Government service;

(2) acted contrary to the principle embodied in Rule 6 of the Bombay Civil Services Conduct Discipline and Appeal Rules.

YOU ARE, THEREFORE, hereby called upon to put in a written statement of your defence within .....days and to state whether you desire to be heard in person. You are also required to file along with your written statement the documents, if any, on which you rely.

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> The three account-books of the Zoroastrian Motor Training School which had been produced in the previous enquiry.

and a copy of the relevant entry from these account-books is sent to you herewith.

O/C
ENQUIRY OFFICER.

PSM. 9/4.

23

Office of the R.L.A.

In view of what the Chief Secretary states in his note dated 31-7-61, the reference to the confidential record in the notice embodying the charges may be deleted.

Sd/-
2/8

Remembrancer of Legal Affairs.

U.R. to P.& S.D., No. 771, Confl., dated the 3rd August 1961.

PSM. 9/4.

25

Legal Department.

A revised draft of Charges is sent herewith.

Sd/- .

Additional Secretary to Government. .

U.R. to H.D., No. 690, Confl., dated the 16th July 1951.

PSM. 9/4.

CHARGES.

This is to charge you Shri V.K.Shahane, Officiating Superintendent of District Prison under suspension as follows:

1. On 15-8-50 you having arranged that you shall unfurl the National Flag at sun rise that day in the presence of the office people, guarding staff and the prisoners and having asked them to attend in time, yourself did not arrive till long after the appointed time and till after the hoisting and salutation had already been done.

Thereby you displayed a neglect of duty, an indifference to the importance of the National occasion, and a disregard for punctuality.

2. On 15-8-50 you without lawful excuse openly accused your subordinate Havildar Ganpat Bheele of having sent pseudonymous applications against you in the name of Joshi and thereafter kept on harassing him.

Thereby you have acted without a sense of responsibility and have given to your subordinate an undeserved harsh treatment.

3. You used to instigate or encourage your subordinates to beat the prisoners and accordingly Subedar Lalsing, Jamedar Nigde, Sepoy Chawan Naik Mujawar, Havildar Power and others of the gurding staff used to beat the prisoners and severely illtreat them and as a result of your instructions or instigation and encouragement the following prisoners among others were severely beaten, namely:

The Parsi Prisoner (Name)	on or about (approximate date or dates when the beati took place)

The Parsi Prisoner (Name) on or about (approximate date or dates when the beatingtook place)

Prisoner	Kison	(fatherls name)	"	"
"	Venkat	"	"	"
"	Laxya	"	"	"

and after they were beaten they ~~xxxxxxxxxxx~~ were produced before you and you ordered them to be put in bar-fetters.

Thereby you have violated the spirit and the letter of Prison Rules particularly Rule No. 106 of the Bombay Jail Manual.

4. On or about (date) you personaly beat and kicked Prisoner Jamal Usman (alias Mamu) No. 1079 when he requested you to take him out of fetters and solitary confinement and give him work. In that assultyou took the help of L/Naik Mujawar. ~~Thexxiddxxxxxkk~~ The said assult was made in thepresence of Dr. Kambley M.O., Lalsing, Mohite, Jaffarkhan and C.O.Abbas. (Give full names of these witnesses.)

Thereby also you violated the letter and the spirit of Rule 106 of the Bombay Jail Manual.

5. On or about 7-12-1950 you in a lecture at morning parade exhorted the Jail guards and subordinates to beat the prisoners and hammar them soundly treating them as enemies.

Thereby also you violated the letter and spirit of Rule 106 of Bombay Jail Manual.

6. You instructed your subordinates in charge of the Jail ration stock to allot lesser

to allot lesser quantities to prisoners with a view to enable yourself and other subordinates to remove portions of rationed stock of foodgrains for your and their use and in particular in April 1950 you sent your car with constable Barger to Santhali prison andthis constable removed, in the car, from the jail ration stocks about half a maund of rice, 35 lbs. of ground-nuts, 6 lbs. of matki 55 lbs. of onions, 5lbs. of coccanut oil, 110 lbs. of Dal etc. for your private use.

Thereby you have committed and abetted the Commission of criminal misappropriation of prison property.

You have thus rendered yourself liable to punishment and you are hereby called upon to show cause why any of the punishments mentioned in Rule 49 of the Civil Services (Classification, Control, and Appeal) Rules should not be inflicted on you.

You are required to file your written Statement of defence on or before and to state whether you desire to be ~~first~~ heard in person. The Written Statement should be filed before the undersigned who has been appointed the Enquiry Officer by Government, under Home Department Reference No. 6614 dated 27-4-51.

You shall also state before the Enquiry Officer, whether you desire tobe heard in person or to examine any witnesses.

A list of witnesses likely to be examined in the Enquiry proceedings is appended herewith and you willbe entitled to obtain copies of all relevant documents.

You are informed that your previous confidential record andservice willalso be taken into consideration in the inquiry.

Legal Department.

The view taken by the Political and Services Department is correct.

It may however be pointed out that the third proviso to Rule 151 (b) of the Bombay Civil Services Rules which governs the case was introduced by an amendment by Government Resolution, Finance Department No.1753/33, dated the 13th April 1950 and that the orders thus amended were to take effect from 1st April 1950 and it was provided that "the subsistence allowance already fixed should be refixed with effect from 1st April 1950 in accordance with these orders". Therefore the fixation of the subsistence Allowance in accordance with the third proviso will have to be from 1st April 1950 and not any earlier date.

Sd/-

Additional Secretary to Government.

U.R. to P.& S.D. No. 851, Confl., dated the 8th October 1951.

PSM. 9/4

Legal Department.

Seen and returned.

The position stated in para 3 of the Political and Services Department note dated the 8th October 1951 appears to be correct. The Government Resolution, Finance Department No. 1753/33, dated the 8th October 1948 was lost sight of because the necessary correction in accordance with that resolution did not appear in the copy of the Bombay Civil Services Rules manual available here.

Sd/-

Additional Secretary to Government.

U.H. to P.& S.D., No. 868-Confl., dated the 16th October 1951.

PSM. 9/4

Legal Department.

A Government servant under suspension who accepts job elsewhere still has to be considered as a Government servant; and for his having accepted employment in contravention of rule 21 of the Bombay Civil Services Conduct, Discipline and Appeal Rules seperate action can be taken against him. Such servant cannot therefore be considered to have "Self discharged" himself by reason of his having accepted a job elsewhere.

Sd/-

Additional Secretary to Government.

U.R. to F.D. No. 16138, dated the 11th October 1951.

P3M. 9/4

Office of the R.L.A.

Attention is invited to paragraph 4 of Appendix II of the Bombay Civil Services Conduct, Discipline and Appeal Rules which reads as follows:-

> "The charges as framed should be communicated to the person charged, together with a statement of the allegations on which each charge is based and other circumstances which it is proposed to take into consideration in passing orders in the case. The relevant allegations as to facts should be clearly stated, as well as the inferences which they appear to lead to; and any circumstances which appear to support such inferences should also be clearly mentioned Copies of the relevant documents, if any, should also be supplied to him. In short, the person charged should be informed to the whole case against him in all its essential features;."

Therefore, the other circumstances which it is proposed to take into consideration in passing orders in the case have to be communicated along withthe charges and the statementof allegations. The previous confidential record and the service of the person charged would be such 'other circumstances'. It appears from the copy of the notice which the Enquiry Officer proposes to serve on Shri Shahane under Rule 55 of the Civil Services Conduct, Discipline and Appeal Rules (appearing at pp. 357-359) that the Enquiry Officer proposes to take into consideration the previous confidential record and service of Shri Shahane. If that is so, it is necessary that Shri Shahane should have notice of it and that is why that particular portion of the proposed notice was incorperated in the draft of Charges approved by the Additional Secretary, Legal Department. The draft of Charges as approved, incorperates the notice to be given to the person charged communicating to him the charges he is calle upon to answer.

2. It is true that the confidential record and service are not to be taken into consideration in order to decide whether or not the allegations on which the charges are based are proved

are proved, but are to be taken into consideration in passing orders in the case . But if they are proposed to be taken into consideration by the Enquiry Officer in deciding what recommendations he should make about the question of punishment, it is necessary that the person charged should have notice of it so that he may urge before the Enquiry Officer whatever he may have to urge on the point.

3. The P.& S.D. may consider if in the light of the above observation they still think that the portion in question in the draft Charge should be deleted.

Sd/-
27-7

Remembrancer of Legal Affairs.

U.R. to H.D. (through P. & S.D.), No. 746-Confl.
dated the 28th July 1951.

PSM. 9/4

Legal Department.

The draft charge-sheet and the statement of allegation
are in order.

Sd/-

Additional Secretary to Government.

U.R. to P.W.D., No. 885-Confl., dated the 22nd October 1951

Grant of Family pension to Shrimati Kewshik.

Bombay Civil Services Rules Rules 271(3), 272, 275, 302, 304, and 305.

Legal Department.

Shri D.N.Kewshik, who was serving Government as the Director of Industries, was killed in an air crash at Cairo while he was enhis way to Sweden on a United Nations Fellowship. In recognition of the meritorious service rendered by him to Government certain educational concessionsk were sanctioned by Government to his two children in Government Resolution, Development Department, No.1165, dated the 20th September 1950 (p.11-Correspondence section) Later on under G.R.,D.D.,No. 1165/A- dated the 2nd August 1951, Government have sanctioned, as a special case, a family pension of Rs. 150/- per mensum for 10 years to Mrs. Kewshik under Rule 275 of the Bombay Civil Services Rules. Mrs. Kewshik hasrepresented that as Government have decided to grant her family pension her case is governed by Rule 302 and that she willbe entitled to a pension for life at the rate of half the salary drawn by her husbandat the time of his death subject to the maximum of Rs. 200/- . The Secretary, Finance Department, considers that when a pension is sanctioned as a special case, it is open to Government to sanction it subject to such restrictions and modifications as it considers necessary. He considers that if the strict principle of B.C.S.R. 275 is to be onsidered applicable, the concessions mentioned in the G.R. of 20-9-1950 would not have been permissible. The Chief Secretary for the reasons stated in his note dated 17-10-1951 does not agree with this view. He considers that since Rule 275 is quoted in the orders the orders willhave to be revised and a pension of Rs. 200/- would have to be sanctioned to

sanctioned to Mrs. Kowshik for her life-time. This pension, Chief Secretary thinks, should be in addition to the educational concessions already granted. The R.L.A. is requested to advise whether the view taken by Chief Secretary is correct.

Under Rule 275 of the B.C.S. Rules Government may sanction the grant of a family pension to the family of a Government servant who is killed or who dies of injuries received or disease contracted in the circumstances described in Rule 271 or 272 Rule 271 describes three circumstances viz. (1) while serving in a civil capacity with a military force, (2) while serving in a military capacity with a military force and (3) while performing any particular duty which has the effect of increasing liability to injury beyond the ordinary risk of the post held. Rule 272 makes provision for other two cases viz. (1) being injured in or in consequence of the due performance of his official duties or because of official position and (2) receiving of injury to health in the execution of official duties. In Government circular, Finance Department, No. 1994/33, dated the 21st May 1949, Government have issued orders for grant of compensation to an officer or his dependents in the event of his receiving injury or being killed as a result of an accident while travelling on duty by air. It is provided that, as a temporary measure, the case of each such officer should be regulated by the provisions of the relevant rules in the Bombay Civil Services Rules governing.

PSM. 9/4

governing the grant of wound, or injury or family pension. Shri Kowshik was killed while travelling to Sweden for receiving training and his case would appear to fall under Rule 272 and not under Rule 271(3) as assumed in the Finance Department office notes. The amount of pension in his case therefore would be governed by Rule 305. That Rule provides that if a family pension is granted under Rule 275 to the family ~~xxxxxx~~ in case of a Government servant who is killed in; or in consequence of, the due performance of his official duty, its amount shallbe fixed by Government on a consideration of all the circumstances of the case Provided that it shall not exceed the maximum amount admissible under Rule 304 which in turn states that the amount is to be calculated under Rule302. Under Rule 302, it is true, Shrimati Kowshik would be entitled to a pension of Rs. 200/- but as the case falls under Rule305 it is open to Government on a consideration of all the circumstances to sanction a lesser amount. In fixing the amount of the pension it will be open to Government to take also into consideration any ex-gratia payments or concessions sanctioned by Government to the family of the deceased Government servant.

As regards the duration of the pension, it appears that under Rule 302(4) the pension i s to be for life if it is granted to a female. However, under Rule 302 (2) it is the son who is entitled to a pension and the widow becomes entitled to it only if there is no son. As Shri Kowshik has left behind him a son, the pension should strictly speaking have been granted to him and the duration of the pension would then have been 12 years under Rule 302(3)(ii). As Government have chosen to grant the pension to the widow, the period of it needs to be increased to 12 years in order to make availabl

available to the family the full benefit of the B.C.S.Rules. In this connection it may be added that any ex-gratia concessions granted by Government would be relevant only in considering the quantum of the pension, but not its tenure.

Sd/-

Additional Secretary to Government.

Chief Secretary, No. 887-Confl. dated the 23rd October, 1951.

PSM./10/4

Question regarding the grant of compensation to an officer or his dependents in the event of his receiving an injury or meeting death while travelling on duty by air.

GOVERNMENT OF BOMBAY.

FINANCE DEPARTMENT.

Circular No. 1994/33.

Bombay Castle, 21st May 1949.

CIRCULAR OF GOVERNMENT.

In view of the fact that Government servants are frequently required to travel on duty by air, Government has had under consideration the question of the compensation to be granted to an officer or his dependents in the event of his receiving an injury or being killed as a result of an accident while travelling on duty by air. It has been decided that, as a temporary measure, the case of each such officer should be regulated by the provisions of the relevant rules in the Bombay Civil Services Rules governing the grant of wound, or injury or family pension, as the case may be . These orders apply to those Government servants who are authorised to travelk by air under Bombay Civil Services Rule 417-B.

2. Government has also examined the position of reimbursement in respect of any additional premia paid by the Government servant to cover the risk. Another that has been considered is that Government should make good any difference between the sum assured and the sum which the officer or his estatewould actually get from the Insurance Company, ifno extra premium had been paid by the Government servant for the special risk undertaken. Government has come to the conclusion that there is no justification for the grant of either of these concessions in addition tothe one admissible under paragraph 1 above If, therefore, a Government servant wishes to ensure that his estate

estate should receive the full sum assured

he should meet the cost of additional premia

from his own pocket.

2 The amendment shall take effect from 1st March 1949.

By Order of the Governor of Bombay

N. V. TILVE

Under Secretary to Government

Fin. H 17..

PSM. 10/4

G.R. No. 3339/33 F.D. dated 18th May 1949.

Shri M.Khojwani, Epidemic Medical Officer, was asked by the Director of Public Health, Ahmedabad, to take charge of a Government bus and to carry out inoculation and disinfection of water supply in Viramgam Taluka. While travelling on duty by this bus, the bus overturned andShri Khojwani sustained serious injuries as a result of which he was an indoor patient in hospital. The Finance Department has turned down the proposal for grant of special disability leave to him under rules 748 and 749 of the B.C.S.Rules. The Finance Department in rejecting the proposal observe as follows at pp. 44to45:-

2 "Please see B.C.S.R. 748 and 749. Under the rules special disability leave is admissible to a Government servant who is disabled by an injury intentionally or accidentally inflicted in or caused in 'due performance of duty.' These rules do not permit the grant of special disability leave in cases where the injury has no connection with th Government servant's duties or the Government servant sustains the injury merely while on duty unless it is established that he is exposed to risk in discharge of his duties where by 'risk' is meant something beyond the ordinary liability to meet with an accident which every human being bears in his day today life.

"Considering the present case in the light of the fo going note it is submitted that theinjury sustained by Shri is an accidental one. He was unfortunate in that the ve over-turned ona good road. But the mere fact that the a accident took the form of the whole van being overturne cannot be regarded as giving the case or the circumsta attending it, an exceptional character from the point view of Government. Attention is invited to note bele

below B.C.S.R. 271"

H.M.(Health) remarks:-

" A man on Government duty in a Government truck meets with an accident; and is laid up for seven weeks. Government Doctors have certified the necessity of that leave. Luckily except two cars no permanent disability has resulted. Surely the man is entitled to leave. An industrial worker is not only entitled to leave but to compensation. also.ñ

With these remarks H.M.(Health) has asked the additional Secretary, Legal Department, to advise in the matter.

2. Rule 749 applies to "a Government servant who is disabled by aninjury accidentlly incurred in or in consequence of the due performance of his official duty." It appears that Shri Bhojwani was asked to take charge of a departmental bus and to carry out inoculations and disinfection of water supply in Viramgam Taluka,. Presumably, the bus also carried the materials for inoculation and disinfection of water supply. Thus it was part of Shri Bhojwani's duties to travel by the departmental bus from village to village and to carry out the duties entrusted to him whereever he found it necessary. Having regard to the nature of his duties he could not have been able to perform them unless he travelled by the departmental bus nor had he any option in the matter. In the circumstances, if Shri Bhojwani sustained injuries by the overturning of the bus, it cannot reasonably be contended that he had not accidentally incurred the injury "in or in

10/4

"in or in consequence of the due performance of his official duties". He would, therefore, be eligible under rule 749 to the special disability leave. Rule 271 deal with the grant of wound or injury pension and the note to that rule has therefore no relevance to the interpretation of Rule 749.

Sd/-

Additional Secretary to Government

U.R. to L.S.G.R.P.H.D., No. 16384, dated the 16th October, 1951.

10/4

Submitted with reference to R.D. note at p. 57 ante. One Shri B.U.Bhat who was serving under the Collar. of Ahmedabad originally as a Tenancy Aval Karkun and then as Tagavi Aval Karkun was transferred as Requisition Inspector. On transfer he submitted an application for long leave; but as the same was refused by the Collector Against that order of the Collr. he has submitted an appeal to Govt. The R.D. considers that though the powers to grant leave are delegated to the Collr. It would not be advisable for Govt. to revise the Collr.'s order. The R.D. however is not inclined to accept that advice. That Deptt. considers that the grounds on which leave was refused by the Collr. were not justifiable. That Deptt. further considers that even after delegation of the power to the Collr. Govt. is stillcompetent to exercise the power with a view to seeing that the delegated authority has exercised the power properly. The R.L.A. is requested to advise whether the view expressed by the R.D. is correct.

2. Rule 623 of the B.C.S.Rs. provides that leave other than special disability leave admissible under these Rules may be granted to a non-gazetted Govt. servant by the authority whose duty it would be to fill up his post if it were vacant or by any other competent authority. Shri Bhat when he applied for leave was holding the post of Aval Karkun. If leave had been granted to him the vacancy caused would have been filled up by the Collr. The post of Aval Karkun is mentioned under the heading 'Subordinate Revenue Service' in Appendix B to the Bombay Civil Services Classification and Recruitment Rules. Under rule 10 of These Rules recruitment to subordinate services shall be made by Heads of Deptts. which the Collr. is (Vide entry 10 in App. II to the B.C.S.Rs.). It would appear therefore that the power to grant leave to Shri Bhat and fill the vacancy vested in the Collr. of Ahmedabad. The Collr. derived

derived it from rule 10 of the B.C.S. Recruitment Rules read with rule 623 of the B.C.S.Rs. The power has not been delegated. Consequently the principle that the delegating authority does not denude itself of the power is not attracted here. The proposal made by the R.D. in para.2 of their office note (p.57) to revise the Collr. order does not appear to be correct. If the R.D. think that the leave should be allowed, it might ask the Collector to reconsider its decision in the light of what it might have to say in the matter,.

Sd/-
16-11-51.

D.S.(Opinion) I agree.

Sd/-
16/11.

Sd/-
17-11.

Additional Secretary

R.L.A.

Sd/-
17/11

U.R. to R.D. No. 18402,dt. the 19th Nov. 1951.

PSM. 10/4

R.I.No. 746-Genl., dt. 22/11/61

Submitted with reference to F.D. note on p.35ante. One Shri V.K.Chitnis, a clerk serving in the office of the Superintendent of Prohibition and Excise, Alibag, was suspended from duty with effect from 20th January 1951, on account of misappropriation of Government money to the extent of Rs. 1153/3/-. He was subsequently prosecuted and convicted by the Court. On his suspension a subsistence allowance of Rs.20-15-0 and dearness allowance of Rs. 35/- per month was ordered to be paid to him. The Director of Excise and Prohibition has now raised the question whether the amount of subsistence allowance due to Shri Chitnis cannot be adjusted against the amount misappropriated by him.

2. A/Rule 151 of the B.C.S.Rs. provides that a Govt. servant under suspension is entitled to the payment of subsistence allowance at the rate specified in clause(b). Under the first proviso that clause he also gets dearness allowance. The intention underlying the payment of subsistence allowance to a Government servant under suspension is to enable him to maintain himself and his family during the period of suspension; for under rule 21 of the Bombay Civil Services, Conduct, Discipline an Appeal Rules, he cannot, without the previous sanction of Government engage in any trade or undertake any employment while on duty duty or on leave, and during the period of suspension he is considered to be still in service. Note 1 to rule 151 accordingly says that the grant of subsistence allowance cannot be altogether withheld. Looking to the object of grant of subsistence allowance to Government servants under suspension it does not appear it would be feasible in this case to withhold the payment of the amount to Shri Chitnis and to adjust the same

the same towards the amount proposed to be recovered from him.

3. The opinion in Shri Jagarwal's case referred to the F.D. note (Opinion No.G 445, dated 24/9/1951) is distinguishable and has no application in this case. In that case the proposal was to adjust the money in the hands of Government and due on account of pay and allowances.

Sd/-
24/11/51.

D.S. (Opinion) I agree.

Sd/-
26/11.

Additional Secretary.

Sd/-
26/11

U.R. to F.D. no.,984-Confl., dt.the 27/11/1951.

PSM. 10/4.

Office of the R.L.A.

The procedure for recovery of the fine is laid down in section 386 Criminal Procedure Code. There are two modes (1) or (2) the Magistrate may attach the movable property of the accused or (2) he may issue a warrant to the Collector of the district authorising him to realise the amount by execution according to civil process against the moveable or immoveable property or both of the accused.

Here we are concerned with the subsistence allowance to be paid to the accused. The question, therefore, is whether it is moveable property, for then it can be attached in one of the above two modes. Now a subsistence allowance can be placed higher than salary. Salary which is not in possession of the accused but is still to be paid to him cannot be said to be moveable property as contemplated by section 386 Criminal Procedure Code (See Marriage Sec. Hlaing v/s. Ma TheinKhin A.I.R.1934 Rangoon 82).

Therefore the fine cannot be recovered from the subsistence allowance still to be paid to Shri Ramchandani.

Attention, however, is drawn to Rule151 clause (b) of the Bombay Civil Service Rules Manual Vol. I. One of the previse to that clause reads as under:-

"· provided that when a Government servant is convicted by a competent court and sentenced to imprisonment, the subsistence allwance shall, pending the result of an appeal to a higher court, be reduced to a nominal amount of one rupee per month and the question of paying him a pay and allowances, either in full or in part for the period from the date of conviction and sentence till the date of the decision of the Appellate Court, in the event of an appeal being filed, may be considered by Government after the appeal is decided."

Subsistence allowance in respect of the period after the date of conviction will be governed by the above previse.

PSM. 10/4

Sd/-
23/8.
Remembrancer of Legal Affairs.

U.R. to Office of the Deputy Custodian of Ev. Property
No. 503, Confl., dated the 28th May 1951.

Office of the R.L.A.

There is no objection to following the course suggested in paragraph 2 of the Finance Department note dated22/11/51.

Sd/-
10/12

Remembrancer of Legal Affairs.

U.R. to F.D. No. 1026-Genfl., dated the 10th December,1951.

PSM. 10/4.

KNOW ALL MEN BY THESE PRESENTS THAT I,

resident of

and

the widow of

for myself and as mother and natural guardian of my minor

sons and

I/,we,

sureties on her behalf

are held and firmly bound to the Governor Bombay in the sum of Rupees Rs. to be paid to the said Governor or his successors or assigns FOR WHICH payments to be well and truly made, each of us severally bind(s) himself and his heirs, ~~his~~ executors, administrators and assigns and every two and all of jointly, bind ourselves and our heirs, executors, administrators assigns firmly by these presents

As witness our hands this

day of 19

WHEREAS was at the time of his death in the employment of Government AND WHEREAS the said died on the day of 19 and there was then due to him the sum of Rupees

for gratuity in respect of his said office AND WHEREAS the above bounden (hereinafter called 'theClaiment) claims to be entitled to the sum of Rs being the one third of the said sum as the ~~his~~ of the said

and also claims to be entitled to the sum of Rs being the two third ~~of~~ the said sum and as mother and natural guardian of her minor sons - and - but has

but has not obtained Letters of Administration of or a succession certificate to the property and effects of the said

AND WHEREAS

the claimant has satisfied the (Officer con-- cerned) that she is entitled to the aforesaid sum and that it would cause undue delay and hardship if the claimant were re~~x~~ required to produce Letter of Administration of or a succession certificate to the property and effects of the said AND WHEREAS Government desire to pay the said sum to the Claimant but under Government rules and orders it is necessary that the claimant should first execute a bond with one surety/ two sureties to indemnify Government against all claims to the amount so due as aforesaid to the said before the said sum can be paid to the claimant

NOW THE CONDITION of this bond is such that if after payment has been made to the claimant the claimant or the surety/sureties shall in the event of claim being made by any other person against Government with respect to the aforesaid sum of Rs. refund to Government the sum of Rs.

and shall otherwise indemnify and save Government harmless from all Liability in respect of the aforesaid sum and all cost incurred in consequence of any claim thereto THEN the above written bond or obligation shall be void but otherwise the said bond shall remain in full force and virtue..

PSM. 10/4

IN WHITNESS to the above written bond and the condition therefor We,

therefore we,

for myself and as mother and natural guardian

of my minor sons - and -

and and

have hereunto set our hands this day of

PSM. 19

OFFICE OF THE R.L.A.

The question discussed in these papers is to whom the amount of gratuity due to the late Shri J.S.Sawant of the L.S.G.& P.H.D. under Government Resolution, Finance Department No. 8315/33, dated 20th December 1950 should be paid. The Finance Department has advised the Department that the amount may be paid to the legal heirs of Shri Sawant in accordance ~~in~~ with Bombay Civil Services Rules 227 and 228. The L.S. G.& P.H.D. considers that the amount is payable to the two(minor) sons of Shri Sawant and can be paid to Shrimati Sawant on their behalf on her executing an indemnity bond. The R.L.A. is requested to advise.

2. Para. 3 of Government Resolution, Finance Department No. 8315/33, dated 20th December 1950, provides for the payment of gratuity to Government servants. Para.4 provides for the making of a nomination by the Government servant conferring on one or more persons the right ~~xxxxxx~~ to receive the amount of gratuity. If a government servant has got a family (which expression includes wife and sons) the nomination cannot be made in favour of an outsider. Shri Sawant has not left behind such nomination. There is no specific provision in the Government Resolution as to how the amount should be paid in the absence of nomination. Para.12(3) of the Government ~~xxx~~ Resolution however provides that the existing rules (i.e. the B.C.S.Rules) which apply to the grant of an ordinary pension that may be sanction under sections II and III of the Government Resolution in so far as such rules are ~~not inconsistent~~ inconsistent with the provisions of the Government Resolution. The relevant rules are these in Chapter XI of the Bombay Civil Services Rules. Rules 227 and 228 of these Rules provide that

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provide that on the death of a pensioner payment of any arrears due to him may be made to his heirs. Under clause (ii) of rule 228 when the amount exceeds Rs.500/- payment may be made under the orders of Government on the execution of an indemnity bond with such sureties as Government may require, if they are satisfied of the right and title of the claimant and consider that undue delay and hardship would be caused by insistence on the production of letters of administration. Shri Sawant has left behind widow and two minor sons. The widow takes the same share as a son (see Mulla's Hindu Law, p. 35). The amount of gratuity will therefore be payable equally amongst the widow and the two sons. As the two sons are minor, there would therefore, be no objection to paying the whole amount of gratuity to Shrimati Sawant on her executing an indemnity bond as contemplated by Bombay Civl Services Rule 228. It does not appear necessary to insist on the production of letters of administration since by another Government Resolution, Government has sanctioned family pension to Shrimati Sawant and the two sons.

Shrimati Sawant as the widow of late Shri J.S.Sawant and as mother and natural guardian of her minor sons may be called upon to execute an indemnity bond on the lines of the Financial Rules Form No. 3-A prescribed under the Financial Rules.

A copy of the Financial Rules Form No. 3-A with necessary modification is sent herewith.

Sd/-
6/12
Remembrancer of Legal Affairs.

PSM. 10/4

U.R. to L.S.G. &P.H.D. No. 19620, dated the 6th December 1951.

DPP 14-4-52

EVK 14/4